

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ACKNOWLEDGEMENT AND CONSENT TO THE TERMS OF AN EASEMENT AND CONSTRUCTION AGREEMENT BETWEEN THE ARKANSAS TRAVELERS BASEBALL CLUB, INC. AND ARKANSAS STATE HIGHWAY COMMISSION FOR TEMPORARY CONSTRUCTION EASEMENTS IN THE REPLACEMENT OF THE BROADWAY BRIDGE ; AND FOR OTHER PURPOSES.

WHEREAS, the Arkansas State Highway Commission ("ASHC") has developed a plan to replace the Broadway Bridge which spans the Arkansas River between the cities of North Little Rock and Little Rock, Arkansas; and

WHEREAS, a portion of the proposed reconstruction project crosses and occupies land owned by the City of North Little Rock ("the City"); and

WHEREAS, the Arkansas Travelers Baseball Club, Inc. ("Travelers") is the owner of those certain tracts of land located in Pulaski County pursuant to a Management and Lease Agreement dated April 9, 2007 (as subsequently amended) ("the Lease") between the Travelers, as tenant, and the City, as landlord; and

WHEREAS, ASHC has contracted for demolition and replacement of the Broadway Bridge, and in connection therewith, has requested that the Travelers grant to them certain temporary construction easements necessary to allow the contractor to complete the project; and

WHEREAS, the Travelers and ASHC have reach an agreement for the granting of the temporary construction easements which will cross over portions of the Travelers' ballpark, and in consideration of the loss of use of these areas (including parking facilities), ASHC has agreed to compensate the Travelers the sum of \$130,000.00 which will be used for the addition or replacement of ballpark parking facilities lost due to the temporary construction easements granted; and

WHEREAS, it is in its best interests that the City acknowledge and consent to the Easement and Construction Agreement between the Travelers and ASHC in order that the Broadway Bridge demolition and replacement project may proceed expeditiously.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execution an acknowledgement of and consent to the Easement and Construction Agreement between the Arkansas Travelers Baseball Club, Inc. and the Arkansas State Highway Commission (said agreement being substantially similar in form and content as Exhibit "A" attached hereto and incorporated herein by reference).

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

SPONSOR:



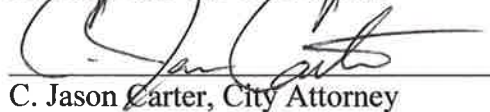
Mayor Joe A. Smith

Mayor Joe A. Smith

ATTEST:

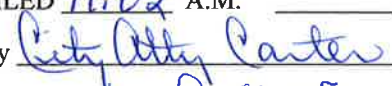
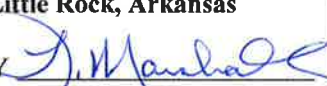
Diane Whitbey, City Clerk

APPROVED AS TO FORM:



C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED	11:02	A.M.	_____	P.M.
By				
DATE	9-8-15			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY				



EASEMENT AND CONSTRUCTION AGREEMENT

This Easement and Construction Agreement ("***Agreement***") is entered into this ____ day of August, 2015 (the "***Effective Date***"), by and between the **ARKANSAS TRAVELERS BASEBALL CLUB, INC.** (the "***Club***") and the **ARKANSAS STATE HIGHWAY COMMISSION** (the "***Commission***").

RECITALS:

WHEREAS, The Club is the owner of the leasehold estate in those certain tracts of land located in Pulaski County, Arkansas more particularly described on **Exhibit "A"** attached hereto (the "***Ballpark***") pursuant to that certain Management and Lease Agreement dated as of April 9, 2007 (as subsequently amended, the "***Lease***") between the Club, as tenant, and the City of North Little Rock, Arkansas (the "***City***"), as landlord;

WHEREAS, the Commission has contracted with Massman Construction Co. (the "***Contractor***") to demolish and replace the Broadway Bridge on Highway 70 between Little Rock and North Little Rock (the "***Project***"), and in connection therewith the Commission has requested that the Club grant to the Commission certain temporary construction easements necessary to allow the Contractor to complete the Project; and

WHEREAS, the Club has agreed to grant to the Commission the requested temporary construction easements in lieu of the Commission taking such easements by eminent domain, in exchange for the Commission's agreement to perform the covenants and obligations set forth in this Agreement.

NOW, THEREFORE, for and in consideration of ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Temporary Construction Easements.

A. **Grant of Easements.** Subject to the terms and conditions set forth in this Agreement, the Club hereby grants the Commission temporary construction easements ("***TCEs***") over those portions of the Ballpark described on **Exhibit "B"** attached hereto for the purposes of performing any construction work on the Project, construction staging and the storage of materials and equipment for the Project. The TCEs may be used for such purposes by the Commission, the Contractor and their respective subcontractors, material suppliers and equipment suppliers (the "***Permitted Users***"). Except within the TCEs, access to any other portion of the Ballpark is specifically restricted without prior written permission from Club management. Contemporaneously with the execution and delivery of this Agreement, the Club will execute and deliver to the

Commission a Donation Temporary Construction Easement instrument for Tracts 15E-6 and 15E-7 to be recorded in the real estate records of Pulaski County, Arkansas. The terms of this Agreement are incorporated by reference into the Donation Temporary Construction Easement instrument.

B. Use of Easements. The Commission shall cause the Permitted Users to use the TCEs in accordance with this Agreement and the Special Provisions set forth in the construction contract between the Commission and the Contractor dated as of September 10, 2014, the terms of which are incorporated into this Agreement by reference.

C. Duration of TCEs. The TCEs shall be temporary easements and shall expire without any further action by the parties upon the date the Commission accepts the Project as complete, or the date that is eighteen (18) months after the date of this Agreement, whichever occurs first.

D. Restoration. If the Contractor or any other Permitted User damages any portion of the Ballpark outside the limits of the TCEs, the Commission shall cause the Contractor to restore, or bear the expense of restoring, the Ballpark to a condition substantially similar or equal to that existing before such damage was done, at no cost to the Club. Following completion of work within the TCEs or expiration of the TCEs, whichever occurs first, the Commission shall cause the Contractor to remove all construction fencing, materials and debris from the TCEs at no expense to the Club, and otherwise restore the TCEs as nearly as possible to the condition as existed prior to the performance of the Project work thereon.

E. Contractor's Insurance. The Commission will request that the Contractor name the Club as an additional insured on the Contractor's commercial general liability insurance policy prior to commencing work in the TCE; however, the Commission shall have no obligation to require the Contractor to provide such coverage.

2. Compensation to the Club. In consideration for the Club's willingness to enter into this Agreement and grant the TCEs, the Commission agrees to pay to the Club the sum of One Hundred Thirty Thousand and No/100 Dollars (\$130,000.00) ("**Just Compensation**") in exchange for the TCEs. The Commission shall pay the Just Compensation to the Club within thirty (30) days following the Effective Date.

3. No Public Rights Created. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Ballpark or any easements granted hereunder to the general public or for any public use or purpose whatsoever.

4. Severability. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative.

5. Modification. This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof and supersedes any and all prior written understandings.

This Agreement may not be changed, modified or terminated except by an instrument duly executed by the Club and the Commission.

6. **Governing Law.** This Agreement shall be governed by and in accordance with the laws of the State of Arkansas applicable to contracts made and to be performed wholly within the state.

7. **Acknowledgment.** The City and the North Little Rock Public Building Authority (the "***Building Authority***"), as the collective owners of the real property comprising the Ballpark, have signed below to acknowledge their consent to the easements granted herein, to the extent such consent may be required by law, but neither the City nor the Building Authority shall have any obligations or liability arising out of this Agreement. The City and the Building Authority further acknowledge that all compensation payable to the Club under this Agreement shall be the sole property of the Club pursuant to the Lease.

8. **Counterparts.** This Agreement may be executed in any number of counterparts which collectively shall constitute a single document binding upon all parties hereto.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Easement and Construction Agreement as of the Effective Date.

CLUB:

ARKANSAS TRAVELERS BASEBALL CLUB, INC., an Arkansas corporation

By: _____

Name: _____

Title: President

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss.
COUNTY OF PULASKI)

On this _____ day of _____, 2015, before me, _____, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____, (being the person authorized by said corporation to execute such instrument, stating his capacity in that behalf), to me personally well known (or satisfactorily proven to be such person), who stated that he was the President of the **ARKANSAS TRAVELERS BASEBALL CLUB, INC.**, an Arkansas corporation, and was duly authorized in his capacity to execute the foregoing instrument(s) for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed, and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2015.

(Notary Public)

COMMISSION:

ARKANSAS STATE HIGHWAY COMMISSION

By: _____

Name: _____

Title: Chairman

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss.
COUNTY OF PULASKI)

On this _____ day of _____, 2015, before me, _____, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____, (being the person authorized by said corporation to execute such instrument, stating his capacity in that behalf), to me personally well known (or satisfactorily proven to be such person), who stated that he was the Chairman of the **ARKANSAS STATE HIGHWAY COMMISSION**, a Delaware corporation, and was duly authorized in his capacity to execute the foregoing instrument(s) for and in the name and behalf of said commission pursuant to [Commission Minute Order _____ dated _____, 20__], and further stated and acknowledged that he had so signed, executed, and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2015.

(Notary Public)

The undersigned have executed this Agreement solely for the purpose of acknowledging their consent (to the extent required) to the terms hereof; however, the undersigned shall not incur any liability or obligation under this Agreement as a result of signing below.

AGREED AND ACKNOWLEDGED:

City of North Little Rock, Arkansas

By: _____
Hon. Joe Smith, Mayor

Attest: _____
Diane Whitbey, City Clerk

Public Building Authority of the City of North Little Rock

By: _____
Chairman

Print Name: _____

EXHIBIT "A"

Legal Description of the Ballpark

Lot 1, North Little Rock Ball Park Addition to the City of North Little Rock, Pulaski County, Arkansas.

AND

Lot 2, Block 100, Westgate Urban Renewal Addition to the City of North Little Rock, Pulaski County, Arkansas.

EXHIBIT "B"

Legal Descriptions of the TCEs

061275
TCE 15E-6

Part of Lot 2 of Block 100 of Westgate Urban Renewal Addition, Township 1 North, Range 12 West, Pulaski County, Arkansas, more particularly described as follows:

BEGINNING at a point 44.78 feet left of and perpendicular to Construction Centerline Station 120+54.08, said point also being on the Northerly right of way line of Riverfront Drive as established by the Plat of Lot's 1 and 2 of Block 100 of Westgate Urban Renewal Addition recorded in Plat Book B, Page 425; thence in a Westerly direction along said right of way line on a curve to the right having a radius of 758.51 feet a distance of 55.33 feet having a chord bearing of North 77°37'06" West a distance of 55.32 feet to a point; thence North 08°56'43" East a distance of 62.60 feet to a point; thence South 81°03'17" East a distance of 35.16 feet to a point; thence North 08°53'51" East a distance of 195.00 feet to a point; thence North 07°18'02" East a distance of 151.12 feet to a point; thence South 80°11'19" East a distance of 20.00 feet to a point; thence South 07°17'47" West a distance of 150.81 feet to a point; thence South 08°53'51" West a distance of 260.92 feet to the point of beginning and containing 10,482 square feet more or less as shown on plans prepared by the AHTD referenced as Job 061275.

RA
8/29/14

TCE 15E-7

Part of Lot 2 of Block 100 of Westgate Urban Renewal Addition, Township 1 North, Range 12 West, Pulaski County, Arkansas, more particularly described as follows:

BEGINNING at a point 49.05 feet left of and perpendicular to Centerline Construction Station 126+00.00; thence North 78°50'19" West a distance of 20.95 feet to a point; thence North 11°33'41" East a distance of 80.98 feet to a point; thence North 04°15'08" East a distance of 157.38 feet to a point; thence South 35°54'24" East a distance of 37.08 feet to a point; thence South 06°01'55" West a distance of 131.79 feet to a point; thence South 10°53'11" West a distance of 80.70 feet to the point of beginning and containing 4,848 square feet more or less as shown on plans prepared by the AHTD referenced as Job 061275.

RA
8/29/14